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OCT 07 2004

OFFICE OF PETITIONS

In re Patent No. 6,751,366	:	
Wei-Zhong Li	:	DECISION ON REQUEST FOR
Issue Date: June 15, 2004	:	RECONSIDERATION OF
Application No. 10/075,432	:	PATENT TERM ADJUSTMENT
Filed: February 12, 2002	:	and
Attorney Docket No. 13854-010001	:	NOTICE OF INTENT TO
	:	ISSUE CERTIFICATE OF
	:	CORRECTION

This is a decision on the "APPLICATION FOR PATENT TERM ADJUSTMENT UNDER 37 CFR § 1.705(d)," filed August 4, 2004. Patentee requests reconsideration of the Patent Term Adjustment to decrease Applicant Delay from 120 days to 5 days and to increase total PTA from 87 to 202 days.

The request for reconsideration of the patent term adjustment indicated in the patent is **GRANTED** to the extent indicated herein.

The patent term adjustment indicated in the patent is to be corrected by issuance of a certificate of correction showing a revised Patent Term Adjustment of one hundred ninety-eight (198) days.

On June 15, 2004, the above-identified application matured into U.S. Patent No. 6,751,366. The instant request for reconsideration filed August 4, 2004 was timely filed within two (2) months of the date the patent issued. See § 1.705(d) (revised Apr. 22, 2004, effective May 24, 2004) (69 FR 21704). The Patent issued with a revised Patent Term Adjustment of 87 days. This revised determination was calculated as follows: The initial determination of PTA of 132 days was increased by 75 days, pursuant to § 1.702(a)(4), for Office delay in issuing the patent later than four months after the date on which the issue fee was paid under 35 U.S.C. 151 and all outstanding requirements were satisfied. However, the determination was reduced by 9 days, pursuant to § 1.704(b), for applicant delay in paying the Issue Fee and by 111 days, pursuant to § 1.704(c)(10), for the filing of a miscellaneous incoming letter after the mailing of the notice of allowance.

Patentee requests removal of four (4) days of applicant delay due to postal delay in receipt of the issue fee payment. Patentee asserts that the response to the notice of allowance was timely, as the three-month period for reply ended on Saturday, November 22, 2003. Patentee states that allowing for the three (3) business days of mail delay, consistent with the Official Gazette Notice dated January 15, 2002, their response should have been received no later than November 27, 2003 (not December 1, 2003).

Patentee further disputes the reduction of 111 days, citing 1247 OG 111 (Notice dated June 26, 2001). Specifically, patentee states that the paper filed December 1, 2003 was a Response to Reasons for Allowance, and as such, its filing does not constitute a failure to engage in reasonable efforts to conclude prosecution within the meaning of § 1.704(c)(10).

Patentee's arguments have been considered, but not found wholly persuasive. The reduction of 9 days is correct. There is no basis for reinstatement of 4 days. Patentee is advised that the OG Notice dated January 15, 2002, provided for reinstatement of patent term adjustment for mail delay only as to replies mailed on or after October 13, 2001 and no later than December 1, 2001 (as shown on a certificate of mailing under 37 CFR 1.8). Otherwise, § 1.704(b) and § 1.703(f) apply. Pursuant to § 1.704(b):

an applicant shall be deemed to have failed to engage in reasonable efforts to conclude processing or examination of an application for the cumulative total of any periods of time in excess of three months that are taken to reply to any notice or action by the Office making any rejection, objection, argument, or other request, measuring such three-month period from the date the notice or action was mailed or given to the applicant, in which case the period of adjustment set forth in § 1.703 shall be reduced by the number of days, if any, beginning on the day after the date that is three months after the date of mailing or transmission of the Office communication notifying the applicant of the rejection, objection, argument, or other request and ending on the date the reply was filed. The period, or shortened statutory period, for reply that is set in the Office action or notice has no effect on the three-month period set forth in this paragraph.

Furthermore, § 1.703(f) provides that "[t]he date indicated on any certificate of mailing or transmission under § 1.8 shall not be taken into account in this calculation" of patent term adjustment. See also, Comment 10, *Changes to Implement Patent Term Adjustment under Twenty-Year Patent Term; Final Rule*, 65 Fed. Reg. 54366 (September 18, 2000). Accordingly, the patent term was properly reduced by 9 days, the number of days beginning on the day after the date that is three months after the date of mailing of the notice of allowance, November 22, 2003, and ending on the date the Issue Fee payment was received, December 1, 2003.

As to the reduction of 111 days, patentee is correct. By Official Gazette Notice dated June 26, 2001, the Director has advised applicants and patentees that the filing after the mailing of a Notice of Allowance of a response to the examiner's reasons for allowance will not be considered a "failure to engage

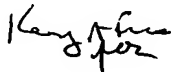
in reasonable efforts" to conclude processing or examination of an application and will not result in reduction of a patent term adjustment pursuant to 37 CFR 1.704(c)(10) *Clarification of 37 CFR 1.704(c)(10) - Reduction of Patent Term Adjustment for Certain Types of Papers Filed After a Notice of Allowance*, 1247 OG 111 (June 26, 2001). A review of the application record reveals that the reduction of 111 days was based on the filing after allowance of the "Comments on Statement of Reasons for Allowance" filed December 1, 2003. Thus, it is concluded that the reduction of 111 days was incorrect.

In view thereof, the revised patent term adjustment indicated in the patent should have been one hundred ninety-eight **(198)** days.

The Office acknowledges submission of the \$200.00 fee set forth in 37 CFR 1.18(e). No additional fees are required.

The application file is being forwarded to the Certificates of Correction Branch for issuance of a certificate of correction in order to rectify this error. The Office will issue a certificate of correction indicating that the term of the above-identified patent is extended or adjusted by **ONE HUNDRED NINETY-EIGHT (198)** days.

Telephone inquiries specific to this matter should be directed to Nancy Johnson, Senior Petitions Attorney, at (571) 272-3219.



Karin Ferriter
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Office of Patent Legal Administration
Office of Deputy Commissioner
for Patent Examination Policy

Enclosure: Copy of DRAFT Certificate of Correction